

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, March 1, 2002

Division One

A097319 & A097324 -- Rodolfo Velasquez, et al. v. Juan Jose Tellechea, et al.

By the Court: Appellant having failed to file a docketing statement in compliance with rule 2(a), First District Local Rules, after notice given dated 02/04/02, the appeal is dismissed. Marchiano, P.J.

Division Two

A094381 -- Allen F. Ehle v. Phillip F. Spalding, et al.

The judgment is affirmed. Respondents are entitled to costs on appeal. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A097366 -- Phillip Yee v. The Superior Court of San Francisco County; Jane Tise et al., R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

Division Five

A093123 -- Monty Williams v. Ruben Newton et al.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, March 4, 2002

Division One

A094947 -- In re Cory R. et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Saralie J.

The order is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A094141 -- Fedco Construction, Inc. v. Japan Senior Citizens Welfare Organization.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

A091586 -- The People v. Matthew Mark Kozlowski et al.

The sentences of Kozlowski and Gatson are each modified to reduce the section 1202.4 restitution fine to \$10,000 and to strike the section 1202.45 parole revocation fine. A modified abstract of judgment shall be prepared to reflect the lawful fines. In all other respects, the judgments are affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Certified Partial for Publication.)

Division Five

A094408 -- Michael Schmier v. The Supreme Court of California et al.

The order is affirmed. Costs to respondents. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Publication.)

Tuesday, March 5, 2002

Division One

A093578 -- Berkeley Unified School District v. United National Insurance Company.

Order Modifying Opinion and Denying Rehearing. By the Court: The petition for rehearing is denied. The opinion is modified as follows: (See order.) There is no change in the judgment. Swager, Acting P.J. (Not for Publication.)

Division Two

A092910 -- The People v. Fred Anthony Grant.

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A093031 -- The People v. Clyde Thomas Gambles II.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A092930 -- The People v. Martin Pulido Sanchez.

The judgment imposing sentence on defendant is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Wednesday, March 6, 2002

Division One

A096714 -- London Market Insurers v. The Superior Court of The City and County of San Francisco; Kaiser Aluminum and Chemical Corporation, R.P.I.

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on February 6, 2002, be modified in the following particulars: (See order.) The modification does not effect a change in the judgment. The petition for rehearing is denied. Swager, Acting P.J. (Not for Publication.)

A096028 -- The People v. Carie Lynn Woodall.

By the Court: Appellant having failed to file a brief after notice given under rule17(a)(1) of the California Rules of Court, the appeal is dismissed. Marchiano, P.J.

Division Three

A097916 -- Julio Cesar Romero v. The Superior Court of Sonoma County; The People, R.P.I.

Let a peremptory writ of mandate issue directing the Honorable Robert P. Dale to vacate his February 11, 2002 ruling that he had not previously recused himself in Sonoma County Superior Court Case No. MCR-340544 and to enter a new and different order notifying the presiding judge of his disqualification as mandated by Code of Civil Procedure section 170.3, subdivision (a)(1). The propriety of Romero's continued incarceration may be addressed to a different trial court judge on remand. In the interest of justice, our decision is immediately final as to this court. (Cal Rules of Court, rule 24(d). McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Wednesday, March 6, 2002 (continued)

Division Four

A089492 -- Williams West v. Bechtel Corporation.

The judgment is reversed with directions to enter judgment for Bechtel Corporation. Costs on appeal to Bechtel Corporation. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

Thursday, March 07, 2002

Division One

A093082 -- Griffin Dix, et al. v. Beretta U.S.A. Corp.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A090637 -- The People v. Dashaun Nellum.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A097915 -- Robert Allen Bonnet v. The Superior Court of Napa County; People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

A097812 -- David L. Clay v. The Superior Court of Marin County; Elisabeth A. Zec-Schultz, R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

A097965 -- In re Don A. Davis, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A097717 -- Kathleen Duggan v. The Superior Court of San Mateo County; John Clarke, R.P.I.

By the Court: The petition for writ of mandate/prohibition/certiorari is denied. The stay previously imposed is lifted. Kline, P.J.

Thursday, March 07, 2002 (continued)

A092407 & A094012 -- Unit Process Company et al. v. Raychem Corporation et al.

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on February 5, 2002, be modified as follows: (See order.) There is no change in the judgment. The petition for rehearing is denied. Kline, P.J.

Division Four

A093695 -- Jan Soehngen v. A.L. Susini.

Order Modifying Opinion. By the Court: It is ordered that the opinion filed herein on February 5, 2002, be modified by deleting the last two sentences of the second full paragraph of the opinion and inserting the following: (See order.) This modification does not effect a change in the judgment. Reardon, Acting P.J. (Not for Publication.)

A097201 -- Rosa V. v. Superior Court of California, City and County of San Francisco; San Francisco Department of Human Services, R.P.I.

A097264 -- Ernesto V. v. Superior Court of California, City and County of San Francisco; San Francisco Department of Human Services; R.P.I.

Let a peremptory writ of mandate issue, directing the San Francisco Superior Court to vacate its order in action No. SD99-3136, authorizing a selection and implementation hearing pursuant to section 366.26, and ordering that it hold further proceedings consistent with this opinion. On remand, the court may entertain a section 352 motion for continuance of reunification services to mother, petitioner Rosa V., beyond the statutory time. The court may consider the likelihood of success of reunification efforts, any information developed pursuant to the court's previous orders and other circumstances relevant to the exercise of its discretion. (Cf. *In re Dino D.*, *supra*, 6 Cal.App.4th at p. 1780.) The petition of Ernesto V. for a writ of mandate is denied. This opinion is final forthwith pursuant to Rule 24(d) of the California Rules of Court. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Thursday, March 07, 2002 (continued)

Division Five

A093549, A093662 -- Conservatorship of the Estate of Robert M. Likes.

The order approving and settling the account of the temporary conservator is reversed to the extent that it approves expenses incurred and awards compensation for arranging medical or psychiatric examinations. In all other respects, the order is affirmed. The order pertaining to attorney fees for Thomas Klitgaard is not a final order, and the purported appeal from it is dismissed as premature. The appeal from the order imposing sanctions on Thomas Klitgaard is dismissed for lack of jurisdiction. In the interests of justice, each party shall bear its own costs on appeal. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A095402 -- In re Michael S., a Person Coming Under the Juvenile Court Law. The People v. Michael S.

The dispositional order is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, March 8, 2002

Division One

A095927 -- The People v. Luis Salazar.

The order revoking probation and the judgment imposed are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A094897 -- In re Maurice T., a Person Coming Under the Juvenile Court Law. The People v. Maurice T.

In light of the Attorney General's concession, we modify the order of commitment to reflect a maximum term of seven years four months. As modified, the order is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A095783 -- James D. Taylor et al. v. Gordon Dohemann et al.

If we were to assume without deciding that the parties' settlement was binding, implementation of its terms would violate both state and local fire prevention provisions. To satisfy the applicable requirements would require redrafting an important part of the parties' agreement, adding provisions to which they have not all agreed. The agreement is therefore unenforceable, and the judgment is reversed. Each side is to bear its own costs on appeal. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A093286 -- The People v. Tyrone Cooper.

The case is remanded to the trial court for resentencing in conformance with this opinion. In all other respects, the judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Friday, March 8, 2002 (continued)

Division Three

A097971 -- Kathleen K. Reeves v. The Superior Court of Alameda County; Marvin Zellner, R.P.I.

By the Court: The petition for writ of mandate and/or prohibition and the related request for a stay are denied. (McGuinness, P.J. & Parrilli, J. participating.) McGuinness, P.J.

A097929 -- In re Darryl Lesean Roquemore, on Habeas Corpus.

By the Court: The petition for a writ of habeas corpus is denied. (McGuinness, P.J. & Parrilli, J. participating) McGuinness, P.J.

Division Four

A093975 -- Nancie Williams et al. v. Weyerhaeuser Company; Julie Dvorsky et al.

The judgment certifying the national class and approving the class settlement is affirmed. The order awarding class counsels' fees and costs is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A093822 -- The People v. Charlie M. Arnold.

The judgment is affirmed in San Mateo Superior Court number SC047891A. The order revoking appellant's probation and imposing a three-year sentence is affirmed in San Mateo Superior Court number SC043058A. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Monday, March 11, 2002

Division One

A094417 -- The People v. Brandon Price Bueno.

For the foregoing reasons, we affirm the judgment. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A095082 -- In re Ashley G., a Person Coming Under the Juvenile Court Law. The People v. Ashley G.

The matter is remanded with directions to the juvenile court to redetermine the amount of restitution appellant must pay her victim, to recalculate appellant's precommitment custody credits, and to forward an amended order of commitment to the CYA. In all other respects, the order of commitment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A093635 -- The People v. Danielle Kathleen Hurchank.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Four

A096559 -- Tammy G. v. The Superior Court of Del Norte County; Del Norte County Department of Health and Social Services, R.P.I.

A096560 -- Bobby B. v. The Superior Court of Del Norte County; Del Norte County Department of Health and Social Services, R.P.I.

We now direct issuance of a peremptory writ of mandate commanding the Del Norte County Superior Court in *In the Matter of Tara B.*, a minor (Del Norte County Super. Ct. No. 01-6073) to order the Department to immediately send notice of the pendency of the proceedings and of the right of intervention, by registered mail with return receipt requested, to all of the tribes identified by the parties herein and to the Secretary of the Bureau of Indian Affairs, and to continue to stay the section 366.26 hearing until compliance with the ICWA's provisions has been accomplished. If, after formal notice is given pursuant to the ICWA, it is determined that Tara is not an Indian child, then the stay shall be dissolved, the orders of the juvenile court are affirmed, and the petition is denied on the merits. This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Monday, March 11, 2002 (continued)

Division Five

A094632 -- In re Raymond T., a Person Coming Under the Juvenile Court Law. The People v. Raymond T.

The order committing appellant to CYA is affirmed. Jones, P.J. We
Concur: Stevens, J., Simons, J. (Not for Publication.)

Tuesday, March 12, 2002

Division One

A095218 -- Harry W. Low, as Insurance Commissioner v. Golden Eagle Insurance Company, Alicia S., an Incompetent Person, etc., et al.

The occurrence complained of in the underlying action was clearly excluded by the language of the policy. Where there is no covered occurrence, all possibility of coverage is negated. The claim was properly denied. The order of the trial court is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A086440, A090295 -- In re Marriage of Elizabeth R. and John H. Garzoli.

The orders appealed from are affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A096652 -- The People v. Tyrus Smith.

We have reviewed the entire record and find no arguable issues. The order is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A094755 -- Estate of Arthur Patrick Ford, Deceased.

By the Court: It is ordered that the opinion filed herein on February 21, 2002, be modified as follows: (See order.) These changes do not effect a change in the judgment. The Petition for Rehearing is denied. Kline, P.J. (Certified for Publication.)

A094392 -- Estate of Rufina Albania Abellan, Deceased.

The orders are affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Tuesday, March 12, 2002 (continued)

A094432 -- In re Nailah W., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Katherine G.

The order terminating Katherine's parental rights is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A092007 -- The People v. William Dean Usher.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A096572 -- The People v. Mark Richard Grubb.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A094317 -- Holiday Drive LLC v. County of San Mateo.

The appeal is dismissed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, March 12, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J.; Sepulveda, J.; and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Anthony Ruiz, Bailiff.

A094815 People
 v.
 Brent Christopher Lewis
Cause called. Thea Greehalgh teleargued for appellant Lewis. Christopher Wei argued for respondent. Cause submitted.

A094906 In re Arthur H., a minor.
 People
 v.
 Arthur H.
Cause called. Gerald Clausen argued for appellant Arthur H. Nanette Winaker argued for respondent. Cause submitted.

The Court adjourned at 9:59 a.m.

Wednesday, March 13, 2002

Division One

A089166 -- The People v. Kevin Tyrone Demings, et al.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A096680 -- The People v. John Jeffrey Frates.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A095641 -- Haydee C. Javier v. Apkar Services Inc., et al.

The trial court properly sustained the demurrers without leave to amend and dismissed appellant's complaint. The judgments are affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, March 13, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

A095220 Crystal Holidays, Inc.
 v.
 Unemployment Insurance Appeals Board, et al.
 Dana Miller
Cause called and argued by David Phillips, counsel for appellant and
Charlton Holland, Deputy Attorney General, counsel for respondent.
Cause ordered submitted.

A095702 Montie S. Day
 v.
 Alta Bates Medical Center
Cause called and argued by Montie S. Day, appellant in propria persona
and Rise Donlon, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P J., Haerle, J., Lambden, J., and S. Graham, Deputy Clerk.

A097006 Camille C.
 v.
 Superior Court, County of Alameda
 Social Services Agency
Cause called and argued by Osha Neumann, counsel for petitioner and
Nedra Shawler, Deputy County Counsel, counsel for real party in interest.
Cause ordered submitted.

Court recessed until Thursday, March 14, 2002 at 9:30 a.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, March 14, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., and I. Santos, Deputy Clerk.

A096715 The People,
 v.
 The Superior Court of Napa County,
 Robert Otto Henkel, RPI.
Cause called and argued by William Kuimelis, counsel for petitioner, and Neil Bowman-Davis, counsel for real party in interest. Cause ordered submitted.

At this point of the proceedings, J. Lambden joined the bench.

A095703 Mary C. Keitel,
 v.
 George W. Heubel et al.
Cause called and argued by Daniel Bacon, counsel for appellant, and Brian Dinday, counsel for respondent. Cause deferred allowing counsel for respondent, Brian Dinday, 3 weeks to file additional letter brief, and 1 week for Daniel Bacon to respond.

At this point of the proceedings, J. Haerle left the bench. Counsels for the next case were reminded that J. Ruvalo was not present and that he would review the tape of oral argument.

A095748 The People,
 v.
 Randall Allen Chiado.
Cause called and argued via teleconference by Kelly LeBel, Deputy Attorney General, counsel for appellant, and Stephen Gallenson, counsel for respondent. Cause ordered submitted.

Wednesday, March 13, 2002 (continued)

Division Four

A096691 -- The People v. David Leroy Stevens.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J.
(Not for Publication.)

Division Five

A095147 -- People v. Shelly Jean Jeffrey.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

Thursday, March 14, 2002

Division One

A095969 -- In re Brijona G. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Latanya M.

The order terminating parental rights is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A095418 -- In re Thomas A., Jr., et al., Persons Coming Under the Juvenile Court Law. San Mateo County Department of Children and Family Services v. Theresa A.

The challenged orders are affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A097729 -- Walter Depew v. The Superior Court of San Francisco County; Chevron USA, Inc., R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A098106 -- Tracy Mullineaux v. The Superior Court of Marin County; Steven Mullineaux, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

A093944 -- Harry W. Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; Pardee Construction Company.

The judgment is affirmed. Golden Eagle is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A094234 -- Self-Serve Petroleum, Inc. et al. v. Eller Media Company.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Thursday, March 14, 2002 (continued)

Division Four

A096399 -- Ronald Ruport v. Virgil Eldridge et al.

The order is affirmed. The parties shall bear their respective costs of - appeal. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

A093819 -- The People v. Rachel Kristine.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A093400 -- The People v. Ricky Romero Hall.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Friday, March 15, 2002

Division One

A093672 -- Christina Windsor v. Sausalito School District, et al.

The order denying appellant's petition for writ of mandate is affirmed. The order sustaining appellant's complaint without leave to amend is construed as a judgment dismissing her complaint, and as so construed, is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A097881 -- State Compensation Insurance Fund v. The Superior Court of San Francisco County; A&J Liquor Company, Inc. et al., R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. The request to file the documents contained in Volumes 5-9 of the record under seal is granted. Kline, P.J.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

MINUTES

Friday, March 15, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan J., Pollak, J., and I. Calanoc, Deputy Clerk.

A097406 Candis W.

v.

Social Services Agency, et al.

McGuiness, P.J. announced that the panel for this appeal is comprised of Parrilli, J., Pollak, J. and McGuiness, PJ, but that Parrilli, J. is away from the court and is unavailable for oral argument. All parties were informed that Parrilli, J. will have access to and will review the taped proceedings and counsel agreed to waive her personal appearance. Cause called and argued by James Cray, counsel for appellant, and via teleconference by Julie Werbel, counsel for real parties in interest. Cause ordered submitted.

A093287 The People,

v.

Charnaye McNeil.

McGuiness, P.J. announced that the panel for this appeal is comprised of Parrilli, J., Pollak, J. and McGuiness, PJ; counsel agreed to waive Parrilli, J.'s personal appearance. Cause called and argued by Juliet Haley, counsel for appellant, and Kathleen Kahn, counsel for respondent. Cause ordered submitted.

A094433 Alan Altura,

v.

Shelfbond Trust, A.G., Inc.

McGuiness, P.J. announced that the panel for this appeal is comprised of Parrilli, J., Pollak, J. and McGuiness, PJ; counsel agreed to waive Parrilli, J.'s personal appearance. Cause called and argued by Stuart Clark, counsel for appellant, and John Schreiber, counsel for respondent. Cause ordered submitted.

A097133 Alejandra R.,
v.
Social Services Agency, et al.
Cause called and argued by Chantal Sampogna, counsel for appellant;
Alexis McBride and Kelly Reiter, counsel for respondents. Cause ordered
submitted.

A093521 Ester B. Jersey,
v.
John Muir/Mount Diablo Health System.
Cause called and argued by Ron Johnson, counsel for appellant, and David
Lester, counsel for respondents. Cause ordered submitted.

A092816 Rolando Doval, et al.
v.
Shell Oil Company.
Justice Corrigan announced that the panel for this appeal is comprised of
Parrilli, J., Pollak, J. and Corrigan, J.; counsel agreed to waive Parrilli, J.'s
personal appearance. Cause called and argued by Harry Wartnick, counsel
for appellant, and Frederick Baker, counsel for respondent. Cause ordered
submitted.

A092022 The People,
A091637 v.
Robert Adam Carpenter / Robert Lee Carpenter.
McGuiness, P.J. announced that the panel for this appeal is comprised of
Corrigan, J., Parrilli, J., and McGuiness, PJ; counsel agreed to waive
Parrilli, J.'s personal appearance. Cause called and argued by Phyllis
Kasler (via teleconference), counsel for appellant Robert Adam Carpenter,
and Laurence Sullivan, counsel for respondent. Cause ordered submitted.

A095479 Kimberly Redmond-Nutting / Michelle Devers,
A095477 v.
Winslow C. Rouse.
McGuiness, P.J. announced that the panel for this appeal is comprised of
Corrigan, J., Parrilli, J., and McGuiness, PJ; counsel agreed to waive
Parrilli, J.'s personal appearance. It was also agreed that these two cases
will be heard at the same time. Cause called and argued by in pro per
Winslow Rouse, and Beryl Crumpton, counsel for respondent. Cause
ordered submitted.

COURT ADJOURNED

Friday, March 15, 2002 (continued)

Division Four

A096402 -- In re the Marriage of Roby Browne and Kenneth Brown.

The order is affirmed with costs to Mother. Kay, P.J. We Concur:
Sepulveda, J., Rivera, J. (Not for Publication.)

A095052 -- In re Anthony J., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Mary G., et al.

The jurisdictional and dispositional orders are affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A094788 -- In re Hector M., a Person Coming Under the Juvenile Court Law. The People v. Hector M.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A094596 -- The People v. Andre Miller.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Monday, March 18, 2002

Division One

A091958 -- Sharon McKinney et al. v. California Portland Cement Company.

A092102 -- Sharon McKinney et al. v. Amcord, Inc.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Partial Publication.)

Division Two

A094707 -- The People v. Robert Ivan Hornstein.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A097133 -- Alejandra R. v. The Superior Court; Social Services Agency et al., R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the permanency planning hearing is set for March 19, 2002, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Corrigan, J. We concur: McGuinness, P. J., Pollak, J. (Not for Publication.)

Monday, March 18, 2002 (Continued)

Division Four

A096351 -- The People v. Alvaro Jose Loza.

The judgment is affirmed. Kay, P. J. We concur: Sepulveda, J., Rivera, J.
(Not for Publication.)

A095599 -- The People v. Kyione Lashawn Nelson.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J.
(Not for Publication.)

A092632, A093323 -- In re the Marriage of Sharon Rhynes and Robert Read.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A096196 -- In re Anthony C., a Person Coming Under the Juvenile Court Law. The People v. Anthony C.

The order adjudicating appellant a ward of the court and placing him on probation in his mother's home is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A096614 -- The People v. Jeremy Justin Maxwell.

The order revoking probation and the judgment are affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, March 19, 2002

Division One

A095143 -- The People v. Nathan Kemp.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A093207 -- The People v. Lee A. Reed.

We therefore conclude that the instructions on assault and voluntary intoxication requested by appellant were contrary to the law. “The court had no duty to give a legally incorrect instruction.” (*People v. Kelly* (1992) 1 Cal.4th 495, 532; see also *People v. Ochoa* (2001) 26 Cal.4th 398, 444; see also *People v. Ochoa* (1998) 19 Cal.4th 353, 426.) A defendant “is not entitled to an instruction that misstates the law.” (*People v. Frye* (1998) 18 Cal.4th 894, 1028.) Further, the trial court “may, and must, refuse an instruction that is an incorrect statement of the law. . . .” [Citation.]” (*People v. Sanders* (1995) 11 Cal.4th 475, 560.) Thus, the trial court did not err by refusing to instruct on the law of assault as requested by appellant. Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A093666 -- Matthew Arnett v. Amaturo Broadcasting, Inc., et al.

For the reasons set forth above, the trial court’s order filed December 4, 2000 is vacated and set aside. The parties’ shall bear their own costs on appeal. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A095267 -- In re Nicholas H., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Kimberly H.

For the reasons set forth in our prior opinions in this case (see footnote 1) we reverse the three orders challenged in this appeal to the extent they continue the placement of Nicholas with Thomas on the erroneous ground that Thomas is the presumed father of Nicholas. We also reverse the May 9 order to the extent it limits visits between Kimberly and Nicholas to Southern California. This case is remanded to the trial court for further proceedings consistent with this opinion. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Tuesday, March 19, 2002 (continued)

Division Three

A096340 -- The People v. Davi Simplest Bradford.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A094906 -- In re Arthur H., a Person Coming Under the Juvenile Court Law. The People v. Arthur H.

The dispositional order is reversed and the cause is remanded to the juvenile court with directions to conduct an in camera examination of Officer Smith to determine if the precise location of his vantage point is material to the issue of guilt or innocence. If the court determines that the information is material, the court shall then make the finding required by Evidence Code section 1042, subdivision (a), or it shall conduct a new jurisdictional hearing. If the court determines that the information is not material, it shall reinstate the dispositional order. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A095891 -- The People v. Gary Lee Jenkins.

Reversed and remanded. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, March 19, 2002 (continued)

A093061 -- Lockheed Martin et al. v. Workers' Compensation Appeals Board and Virginia McCullough.

The WCJ correctly rules that Labor Code section 3208.3 applies to all claims of psychiatric injury, including those resulting from physical work injuries, and the Board erred in reversing this ruling. Therefore, the Board's October 2, 2000 opinion and order granting reconsideration and decision after reconsideration are reversed and the matter remanded to the Board with instructions to issue a new and different order in Case No. WCK 32177 consistent with our opinion herein. McCullough's request for a supplemental award of attorney fees (§ 5801) is denied. Petitioners are awarded costs on appeal. (Cal. Rules of Court, rule 26(a.) Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Certified for Publication.)

A095986 -- The People v. Jose Martinez.

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, March 20, 2002

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; N. Millner, Deputy Clerk, and CHP Officer V. Chambers, Bailiff.

- A094885 Joseph Thomas, et al.,
 v.
 California Department of Health Services.
Cause called and argued by Orrin Leigh Grover, counsel for appellants, and Cheryl L. Feiner, counsel for respondent. Cause ordered submitted.
- A094962 The People,
 v.
 Lawrence Eugene Ashcom.
Cause called and argued by David Blatte, counsel for appellant, and Ryan B. McCarroll, counsel for respondent. Cause ordered submitted.
- A092928 The People,
 v.
 Michael A. Greenfield.
Cause called and argued by Colleen M. Rohan, counsel for appellant, and Sharon Wooden, counsel for respondent. Cause ordered submitted.
- A093665 Gary Schug,
 v.
 Sonoma Valley Unified School District.
Cause called and argued by Kent L. Klaudt, counsel for appellant, and Mark D. Peters, counsel for respondent. Cause ordered submitted.
- A091319 Loong Fah Lu,
 v.
 Ted W. Dang.
Cause called and argued by David L. Roth, counsel for appellant, and Gary Garfinkle, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, March 20, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., and Margulies, J.; B. Robbins, Deputy Clerk; and R. Chavez, court security. Justice Margulies did not participate in argument of the first case.

A094862 Starcare International, Inc.,
 v.
 West Contra Costa Healthcare District.
Cause called and argued by Thomas J. Weiss, counsel for appellant, and Doug Straus, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Swager left the bench. Presiding Justice Marchiano, Justice Stein and Justice Margulies participated in argument of the next two cases.

A093714 The People,
 v.
 Gary Michael Costanzo.
Cause called and argued by Thomas W. McDonnell, counsel for appellant, and Christopher Wei, counsel for respondent. Cause ordered submitted.

A094058 Imogene Barker, et al,
 v
 Fleetwood Enterprises, Inc., et al.
Cause called and argued by Cheryl P. Martinsen, counsel for appellant, and Louis J. Anapolsky, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, March 21, 2002 at 9:00 a.m.

Wednesday, March 20 2002 (continued)

Division Two

A095345 -- The People v. Arnold Wesley Barrett.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A095833 -- Roy Lagomarsino v. International Hunting Club, Inc. et al.

The judgment is affirmed. Respondents shall receive their costs on appeal. Respondents' request for sanctions is denied. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A094871 -- In re the Marriage of Eric P. Trager and Joni D. Trager.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A092816 -- Rolando Doval et al. v. Shell Oil Company.

The judgment is affirmed. Respondent shall recover its costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A093388 -- The People v. Gary Floyd Menyweather.

The sentence imposed is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A097406 -- Candis W. v. The Superior Court of Mendocino County; Mendocino County Department of Social Services et al., R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal.Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The request for a stay is also denied. The permanency planning hearing is set for March 27, 2002. Therefore, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Wednesday, March 20 2002 (continued)

Division Four

A094815 -- The People v. Brent Christopher Lewis.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J.
(Not for Publication.)

Thursday, March 21, 2002

Division One

A094469 -- Kenneth R. Mathews v. Betty J. Squires.

The judgment is modified by reducing it to the amount of \$5,846.61 and is otherwise affirmed. Both parties are to bear their own costs on appeal. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A096357 -- The People v. Rudy Alan Sciolino.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 21, 2002

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Margulies, J.; N. Millner, Deputy Clerk; and CHP Officer, V. Chambers, Bailiff.

A094676 The People,
 v.
 Stephen H.
Cause called and argued by Solomon Wollack, counsel for appellant, and Gerald A. Engler, counsel for respondent. Cause ordered submitted.

A095167/
A095528 Ruel Macaia,
 v.
 Electronic Data Systems Corporation.

Carolina DeGuzman Roque,
v.
Electronic Data Systems Corporation.
Cause called and argued by John S. Perkins, counsel for appellants, and Larry Craig Baron, counsel for respondent. Cause ordered submitted.

Court adjourned.

Thursday, March 21, 2002 (continued)

Division Three

A098083 -- In re Johnny Lawrence Brinson, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus and the related request for appointment of counsel are denied. Petitioner must seek relief in the Sonoma County Superior Court prior to seeking relief from this court. (See *Griggs v. Superior Court* (1976) 16 Cal.3d 341, 347; *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) McGuiness, P.J., Corrigan, J. & Parrilli, J. participating.) McGuiness, P.J.

A091637 & A092022 -- The People v. Robert Lee Carpenter. People v. Robert Adam Carpenter.

The judgments are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A095477 -- Michele Devers v. Winslow C. Rouse.

The June 6, 2001 order denying defendant's motion to vacate the restraining order is affirmed. Any purported appeal from the restraining order filed April 17, 2000 is dismissed as untimely. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A097999 -- Frederick Gaines, Jr. v. The Superior Court of Contra Costa County; The People, R.P.I.

By the Court: The petition for a writ of mandate and/or prohibition and the related request for a stay are denied. (McGuiness, P.J. Corrigan, J. & Parrilli, J. participating.) McGuiness, P.J.

A093287 -- The People v. Charnaye McNeil.

The order setting aside the information is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Certified for Publication.)

Thursday, March 21, 2002 (continued)

A095479 -- Kimberly Redmond-Nutting v. Winslow C. Rouse.

The June 6, 2001 order denying defendant's motion to vacate the restraining order is affirmed. Any purported appeal from the restraining order filed April 17, 2000 is dismissed as untimely. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Five

A094363 -- The People v. Claude Asbury.

The judgment of conviction and the sentence are affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A095879 -- In re Tymell E., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Theodise E.

The order of July 25, 2001, made at the contested six-month review hearing is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A092533 -- Kadle Construction v. MBA Construction, Inc., et al.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Friday, March 22, 2002

Division One

A093865 -- The People v. Kanuri Surgury Qawl.

We therefore decline to impose a requirement of personal waiver of a jury trial in open court by a defendant at an MDO recommitment hearing. We conclude that the written waiver executed by appellant upon the advice of his counsel satisfied the requirements of the constitution and the MDO Act. (*People v. Montoya, supra*, 86 Cal.App.4th at pp. 828, 832.) Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A094010 -- The People v. Darrell Ramey.

The judgments extending appellant's commitment in 9336557B and 9336557C are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A094635 -- In re Sharika J., a Person Coming Under the Juvenile Court Law. The People v. Sharika J.

The order declaring appellant a ward of the court and finding the allegations of battery and vehicle theft as true is affirmed. However, the case is remanded to the superior court for a declaration by the court as to whether the battery offense is a misdemeanor or felony. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A091700 -- The People v. Dennis Anthony Lanham, Sr.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A095110 -- The People v. Daryl Keith Bouie.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Friday, March 22, 2002 (continued)

A095339 -- The People v. Paul Craig Courtois.

The appeal is dismissed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A097889 -- McCubbrey, Bartels & Ward et al. v. Lewis, D'Amato, Brisbois & Bisgaard et al.

By the Court: Respondents' request for judicial notice of the Final Award Re: Costs dated March 4, 2002 is granted. Respondents' motion for frivolous appeal sanctions is denied. The appeal is hereby dismissed without prejudice to appellants' right to file a timely notice of appeal from the trial court's final award of costs. Appellants' request for a waiver of the filing fee for a subsequent appeal is denied as premature. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A086742; A087045; A089590 -- Leon I. Baumgarten v. Sheron Sugarman et al.

The matter is remanded to the trial court for a calculation of prejudgment interest on the jury's award of damages for breach of fiduciary duty and for a determination of the amount of attorney fees to be awarded Baumgarten on his breach of fiduciary duty cause of action and on this appeal. The judgment is otherwise affirmed. Baumgarten shall recover his costs on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A094368 -- In re Thomas D., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Mesha H.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Friday, March 22, 2002 (continued)

A094879 -- Elegant Entertainment Limousine, Inc. v. E.S.I. Bus Sales et al.

The judgment n.o.v. is reversed. The trial court is directed to enter judgment on the jury's verdict. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A093860 -- The People v. Silvio Antonio Zamora.

The appeal in case No. SC044711A is dismissed. The judgment in case No. SC048041A is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A091821 -- The People v. Dalton Lolohea.

A096240 -- In re Dalton Lolohea, on Habeas Corpus.

The judgment is affirmed. The order to show cause is discharged, and the petition for writ of habeas corpus is denied. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A093405 -- M.R. v. Regents of the University of California.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, March 25, 2002

Division Two

A096609 -- The People v. Michael Gregory Hodgson.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J.
(Not for Publication.)

Division Three

A096106 -- In re Geonnie A., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Lashonda C.

The juvenile court's orders are affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A094433 -- Alan Altura et al. v. Shelfbond Trust, A.G., Inc.

The trial court's February 14, 2001 order, which set aside the December 13, 2000 order vacating the default judgment and reinstated the August 30, 1995 default judgment, is affirmed. Given this affirmance we need not address Altura's cross-appeal. Respondents shall recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A096832 -- The People v. Ronald Alan McGuire.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A091232 -- The People v. Jerry Dean Savage.

The judgment of conviction is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Monday, March 25, 2002

A093966 -- In re Dominique W., a Person Coming Under the Juvenile Court Law. The People v. Dominique W.

The matter is remanded to the juvenile court for its determination of the minor's maximum confinement time under Welfare and Institutions Code section 726 and if it elects to aggregate, within the meaning of that section, the period of physical confinement on the counts of carjacking, robbery, and a violation of Vehicle Code section 10851, for its determination of the applicability of section 654. The judgment is otherwise affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Monday, March 25, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J.; Reardon, J.; and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Tony Tam, Bailiff.

A091862 People v. William Frank II
A097126 In re William Frank II on Habeas Corpus
Causes called. Barry M. Karl argued for appellant/petitioner Frank. William Kuimelis argued for respondent. Causes submitted.

At this point, the court reconstituted itself to include Kay, P.J., Reardon, J. and Sepulveda, J.

A083223 In re the Marriage of Keller.
A088847 Jean Keller
v.
Allan Keller
David Wald
Cause called. John DeRonde teleargued for appellant Allan Keller. James Toledano argued for cross-appellant David Wald. Frank R. Frisch argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Kay, P.J., Sepulveda, J. and Rivera, J.

A093868 People
v.
Juan Alvarado
Cause called. Kenneth C. Wikle argued for appellant Alvarado. Dorian Jung argued for respondent. Simultaneous letter briefs due by the close of business on Tuesday, April 9, 2002, at which time this cause will be submitted.

The Court adjourned at 11:08 a.m.

Monday, March 25, 2002 (continued)

Division Five

**A097567 -- Kelli B. v. The Superior Court of Alameda County;
Alameda County Social Services Agency, R.P.I.**

The petition for extraordinary writ review is denied on its merits. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 39.1B(o) *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (1).) Because the section 366.26 hearing is set for April 24, 2002, our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) The request for a stay of the section 366.26 hearing is denied. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, March 26, 2002

Division One

A094058 -- Imogene Barker et al. v. Fleetwood Enterprise, Inc., et al.

The judgment is modified so as to reduce the judgment amount by \$3,000 to reflect a setoff for the Barkers' settlement with Ford. In all other respects, the judgment is affirmed. Costs on appeal to respondents. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A093285 -- The People v. Dexter Hayes.

The SVP determination and resulting civil commitment are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A095167 -- Ruel L. Macaia v. Electronic Data Systems Corporation.

A095528 -- Carolina DeGuzman Roque v. Electronic Data Systems Corporation.

The judgments are affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A093673 -- Steven V. Gallagher v. Groth Bros. Oldsmobile, Inc.

We reverse the order denying Gallagher's application for indemnity. We remand to the trial court, with instructions to vacate the voluntary dismissal of the first amended complaint as to Gallagher; to enter a judgment sustaining the demurrer without leave to amend as to Gallagher only; and to enter a judgment dismissing the action on the amended complaint as to Gallagher. We further instruct the trial court to order Groth Bros. to indemnify Gallagher for his legal fees and costs incurred in defense of the first amended complaint. Gallagher is awarded his costs on this appeal. Kline, P.J. We Concur: Lambden, J., Ruvoilo, J. (Certified for Publication.)

Tuesday, March 26, 2002 (continued)

Division Three

A094783 -- The People v. Michael Alan Coen.

The judgment is affirmed. The trial court is directed to modify the abstract of judgment to reflect the court's intent that the general restitution fine be suspended pending Coen's successful completion of parole. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A095386 -- The People v. Amador R. Gonzales.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

A095156 -- The People v. Gregory Alan Ruff.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A091369 -- Bernadette Barden v. The Permanente Medical Group, Inc., et al.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A093940 -- The People v. Margarito Jiminez Bazurto.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A097038 -- The People v. James Edward Kinyon.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Tuesday, March 26, 2002 (continued)

A093361 -- The People v. Cirilo Montufar.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J.
(Not for Publication.)

Division Five

**A095219 -- John Ulrich, Jr., M.D. v. City and County of San Francisco.
et al**

The order denying the petition for writ of mandate is affirmed. Jones, P.J.
We Concur: Stevens, J., Simons, J. (Not for Publication.)

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Tuesday, March 26, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A094460 Paul A. Dowhal

v.

Smithkline Beecham Consumer Healthcare et al.

Cause called and argued by Mark Todzo, counsel for appellant and by Michelle G. Corash, counsel for respondent and Susan S. Fiering, counsel for Amicus Curiae. Submission deferred for further briefing.

A094053 Marilee Sumpter

v.

Brian Clark

Cause called and argued by H. Lee Horner, counsel for appellant by teleconference call and by David S. Webster, counsel for respondent. Cause ordered submitted.

A093280 Marilee Sumpter

v.

Brian Clark

Cause called and argued by H. Lee Horner, counsel for appellant by teleconference call and by David S. Webster, counsel for respondent. Cause ordered submitted.

A095521 Alex R. Thomas & Company

v.

Casualty Insurance Company

Cause called and argued by Mary P. Derner, counsel for appellant and by Gary R. Selvin, counsel for respondent. Cause ordered submitted.

A093708 The People

v.

Joseph Cleveland White

Cause called and argued by Barbara S. Zuras, counsel for appellant by teleconference call and by Ann Wathen, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Gemello took her place for the remainder of the calendar.

A095696 A.J. Packard

v.

City of Brisbane

Cause called and argued by David P. Clisham, counsel for appellant and by Richard Bolanos, counsel for respondent. Cause ordered submitted.

A093375 Ronald Baldini

v.

White Cap Industries

Cause called and argued by Steven Brady, counsel for appellant and by Bruce H. Winkelman, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:45 a.m.

Wednesday, March 27, 2002

Division One

A094267 -- The People v. Randall Ernest Cole.

The judgment is affirmed. Stein Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A094676 -- In re Stephen H., a Person Coming Under the Juvenile Court Law. The People v. Stephen H.

The order is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A095655 -- The People v. San Koy Tsing.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A095748 -- The People v. Randall Allen Chiado.

We agree with the reasoning of *Stogner* and conclude that section 803(g) creates an exception to section 805.5. The trial court's ruling granting the demurrer on the basis of section 805.5 and dismissing counts 1, 2, 3, 4, 5, 7 and 8 is reversed. The matter is remanded for further proceedings consistent with the views expressed herein. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A097531 -- Rayna G. v. The Superior Court for the County of Contra Costa; Alameda County Social Services Agency, R.P.I.

The petition is denied on the merits. (Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal is barred]; § 366.26 (1)(1).) Given the nearness of the April 24, 2002 hearing date, our decision is final as to this court immediately (rule24(d)). Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Wednesday, March 27, 2002 (continued)

A093586 -- James Kaliamos et al. v. County of Humboldt.

Insofar as it denies recovery of the expert witness fee in the amount of \$4,381, the judgment is reversed and remanded with directions to award appellants \$4,381 for their expert witness fee. In all other respects, the judgment is affirmed. Appellants are awarded their costs on appeal. (Cal. Rules of Court, rule 26(a).) Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A093369 -- The People v. Federico Guerrero Negrete.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A093859 -- The People v. Jesus Ceballos.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A096502 -- The People v. Amy LaMoure.

The order that appellant reimburse the county for a portion of the costs of the services of the probation department and the public defender is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A093716 -- The People v. Keir Robertson.

The judgment and sentence are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093867 -- The People v. Larry Seymour Sharp.

Defendant's conviction is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, March 27, 2002 (continued)

Division Four

A090090 -- The People v. Gerald Jewell Curry.

The judgment, including the sentence, is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A091862 -- The People v. William Frank II.

The conviction for misdemeanor battery is reversed. As modified, the judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A091634 -- Jeffrey A. Harris v. Department of Corrections et al.

The judgment in favor of respondents on Harris's cause of action for sexual harassment is reversed. In all other respects, the judgment is affirmed. Harris is to recover his costs on appeal. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Thursday, March 28, 2002

Division One

A094644 -- The People v. Timothy Kuklinsky.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

A093988 -- In re the Marriage of Cecelia F. Anson and Harry R. Anson, Jr.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A097081 -- Becton Dickinson and Company, et al. v. The Superior Court of Contra Costa County; Intervention, Inc., R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

A094025 -- The People v. Troy Arthur Knox.

We reverse the judgment of conviction for violating Vehicle Code section 23153, subdivision (a) and for violating section 23153, subdivision (b), and for the enhancements related to these two counts, and the matter is remanded for resentencing in accord with this opinion. In all other respects, we affirm the judgment. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A098132 -- In re Michael L. Overton, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Thursday, March 28, 2002 (continued)

Division Three

**A098178 -- In re Anthony Louis Barbarin, on Habeas Corpus.
McGuiness, P.J.**

By the Court: The petition for writ of habeas corpus is denied. The petition was not filed until March 26, 2002, after this court had already filed its opinion in petitioner's direct appeal. (See *People v. Barbarin* (Feb. 25, 2002) A089745) [nonpub. opn.].) Accordingly, as to the juror bias/misconduct claim (Petition, pp. 7-9), which was not raised on direct appeal, petitioner must seek relief in the Solano County Superior Court prior to seeking relief from this court. (See *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) Petitioner's ineffective assistance of counsel claim (Petition, pp. 9-11), which was raised on direct appeal, is denied on the merits. Assuming *agruendo* trial counsel's performance was deficient, petitioner has failed to demonstrate prejudice. (See *People v. Barbarin, supra*, at pp. 29-31.) McGuiness, P.J., Corrigan, J. & Parrilli, J., participating) McGuiness, P.J.

A092306 -- The People v. Gabriel A. Delgado.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A091681 -- The People v. Yeni Harris et al.

The convictions are affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A090843 -- The People v. Deborah Hughes.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Thursday, March 28, 2002 (continued)

A091984 -- The People v. Enrique Ramirez Quintero.

The convictions are affirmed. The sentence is modified to stay execution of the sentence of possession of a controlled substance pending service of the concurrent sentence for transportation of a controlled substance, such stay to become permanent upon service of the sentence on the transportation offense. The trial court is directed to amend the abstract of judgment to reflect this modification of defendant's sentence and to forward a certified copy of the amended abstract to the Department of Corrections. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093117 -- The People v. Francine Louise Sabraw.

The November 8, 2000 order is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A092579 -- In re Raul M., a Person Coming Under the Juvenile Court Law. The People v. Raul M.

The dispositional order is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A083223 -- In re Marriage of Jean R. and Allan P. Keller.

A088847 -- Jean R. Keller v. Allan P. Keller, Davie E. Wald.

In A083223, the judgment on reserved issues and statement of decision entered on May 26, 1998, as amended on April 21 1999 and on May 14, 1999, is affirmed. In A088847, the second amended judgment on reserved issues and statement of decision entered on August 16, 1999 is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A095973 -- The People v. Joseph Ray Walker.

The clerk's order of probation is amended to provide that Walker is subject to the search condition for firearms with or without probable cause. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Thursday, March 28, 2002 (continued)

Division Five

A094482 -- The People v. Armando Dancing Cloud Torres.

The sentence as to count two is ordered vacated. The matter is remanded to the trial court with instructions to prepare a modified abstract of judgment in accordance with this opinion, and to forward a copy of the modified abstract of judgment to the Department of Corrections. The judgment of conviction is otherwise affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Friday, March 29, 2002

Division One

A094962 -- The People v. Lawrence Eugene Ashcom.

The order revoking probation and the sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A093714 -- The People v. Gary M. Costanzo.

The order denying the petition is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A092370 -- The People v. James Johnson.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A093665 -- Gary Schug v. Sonoma Valley Unified School District.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A097627 -- In re Robbye C., a Person Coming Under the Juvenile Court Law. Chavone J. v. Superior Court of Alameda County.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (See § 366.26, subds. (b)(1) & (b)(2).) Since the permanency planning hearing is set for April 12, 2002, this opinion is final as to this court forthwith. (California Rules of Court, rule 24(d).) Ruvalo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Friday, March 29, 2002 (continued)

Division Three

A094283 -- David Custodio v. City of Brentwood.

The judgment is affirmed. Custodio to bear costs of appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A092576 -- Estate of Edward J. Boress, Deceased.

The orders entered by the trial court on December 4, 2000, and December 28, 2000, are affirmed in their entirety. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A086149 -- Jean Deleage v. Saab Automobile, A.B., et al.; State Farm Fire & Casualty Co.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A090929 -- Julia M. Humphreys, as Administrator of the Estate C.F. Humphreys v. Northwestern Title Company.

The judgment is affirmed. Each party is to bear its own costs. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A094158 -- In re Brittany K., et al., Persons Coming Under the Juvenile Court Law. Social Services Agency v. Dainne C., et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A095488 -- In re Santiago L., a Person Coming Under the Juvenile Court Law. Social Services Agency v. Masharie H.

The juvenile court orders are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A092885 -- In re Josh M., a Person Coming Under the Juvenile Court Law. The People v. Josh M.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Friday, March 29, 2002 (continued)

A092387 -- Adelaide Morris v. David S. Boyd.

The judgment is affirmed. Morris is to recover her costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A093278 -- Theresa M. Pickrell v. Raley's Supermarkets.

The judgment is affirmed. Pickrell to bear costs of appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A094759 -- Viragen, Inc., et al. v. AviGenics, Inc.

The judgment is affirmed. Appellants shall pay respondent AviGenics's costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A094922 -- Harda Wong v. Thrifty Corporation et al.

The judgment is reversed and remanded for determination of reasonable attorney fees. Wong to receive costs on appeal. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

Division Five

A093375 -- Ronald J. Baldini v. White Cap Industries.

The order granting a new trial is vacated. The matter is remanded to the trial court for reinstatement of the judgment that had been entered on September 12, 2000. Appellant shall recover his costs on appeal. Stevens, J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Friday, March 29, 2002 (continued)

A094298 -- In re Mariah H., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Social Services v. Bennie Ray H.

The orders appealed from are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)